

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

Stephen Bain,	:	
Plaintiff,	:	
	:	
v.	:	File No. 1:06-CV-222
	:	
Susan Wehry, et al.,	:	
Defendants.	:	

MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION
(Paper 5)

Plaintiff Stephen Bain, a Vermont inmate proceeding *pro se*, brings this action claiming inadequate medical care. Currently pending before the Court is Bain's motion for a default judgment. Bain filed his complaint in October, 2006. Because Bain is proceeding *in forma pauperis*, waivers of service were mailed by the U.S. Marshals Service beginning in mid-February, 2007. (Papers 6, 9-17).

On February 22, 2007, Bain moved for a default judgment, claiming that the defendants had failed to file timely answers and/or notices of appearance. Under Fed. R. Civ. P. 4(d), the defendants' answers were not due until 60 days after the waivers were sent. Accordingly, when Bain filed his motion there was no basis for entering a default judgment. I therefore

recommend that the motion for a default judgment (Paper 5) be DENIED.

Dated at Burlington, in the District of Vermont,
this 31st day of May, 2007.

/s/ Jerome J. Niedermeier
Jerome J. Niedermeier
United States Magistrate Judge

Any party may object to this Report and Recommendation within 10 days after service by filing with the clerk of the court and serving on the magistrate judge and all parties, written objections which shall specifically identify the portions of the proposed findings, recommendations or report to which objection is made and the basis for such objections. Failure to file objections within the specified time waives the right to appeal the District Court's order. See Local Rules 72.1, 72.3, 73.1; 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b), 6(a) and 6(e).